



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
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MCO 5041.1
IGMC
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MARINE CORPS ORDER 5041.1

From: Commandant of the Marine Corps
To: Distribution List

Subj: MILITARY WHISTLEBLOWER PROTECTION

Ref: (a) Title 10, United States Code, Section 1034
(b) DoD Directive 7050.6
(c) SECNAVINST 5370.7B
(d) National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, sec. 546, 106 Stat. 2315, 2416-19 (1992)
(e) DoD Directive 6490.1

1. Purpose. The purpose of this Order is the promulgation of the Military Whistleblower Protection policy.

2. Definitions

a. Personnel Action. Any action taken on a member of the Armed Forces that affects or has the potential to affect that military member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations; and any other significant change in duties or responsibilities inconsistent with the military member's rank.

b. Protected Communication

(1) Any lawful communication to a Member of Congress or an Inspector General (IG).

(2) A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including sexual harassment or unlawful discrimination, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to any of the following:

(a) A Member of Congress, an IG, or a member of a Department of Defense (DoD) audit, inspection, investigation, or law enforcement organization.

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(b) Any other person or organization (including any person or organization in the chain of command) designated under Marine Corps regulations or other established administrative procedures to receive such communications.

c. Reprisal. Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing a protected communication.

d. Whistleblower. A member of the Armed Forces who makes or prepares to make a protected communication.

3. Background

a. Reference (a) requires an expeditious investigation of all allegations of reprisal for whistleblowing submitted by military members. References (b) and (c) implement reference (a) and prohibit:

(1))restricting a military member from making a protected communication to a Member of Congress; and Inspector General (IG) of a DoD Component; a member of a DoD audit, inspection, investigation or law enforcement organization; or any other person or organization (including any person or organization in the chain of command) designated under component regulations or other established administrative procedures to receive such communications; and,

(2)taking (or threatening to take) an unfavorable personnel action or withhold (or threatening to withhold) a favorable personnel action as reprisal for making or preparing a protected communication to a Member of Congress; and IG of a DoD Component; a member of a DoD audit, inspection, investigation or law enforcement organization; or any other person or organization (including any other person or organization in the chain of command) designated under component regulations or other established administrative procedures to receive such communications.

b. Reference (d) established certain requirements for command directed mental health evaluations. Reference (3), implements the Public Law; and:

(1) establishes the rights of members referred by their commands for mental health evaluations;

(2) establishes procedures for outpatient and inpatient mental health evaluations that provide protection to members referred by their commands for such evaluations;

(3) prohibits the use of command referrals for mental health evaluations in reprisal against military members who make a protected communication protected by statute or directive;

(4) incorporates guidelines on psychiatric hospitalization of adults prepared by professional civilian health organizations.

4. Policy

a. For many years, we as an institution have taught our Marines to use the chain of command to resolve their problems. Nothing has changed in that regard. The primary means to resolve a problem should still begin informally and at the lowest level. Under most conditions the informal process is sufficient. If this does not result in a satisfactory conclusion, the individual may Request Mast. Although these two avenues of redress are the encouraged methods, they are not the only methods of redress.

b. It must be understood by every Marine that all service members are free to make a protected communication to any of the individuals or agencies formerly mentioned, if they so choose. Service members, by law, cannot be reprisal against, nor will they be prohibited from making a protected communication.

c. Substantiated reprisal by a military is punishable under Article 92 of the Uniform Code of Military Justice, "Failure to Obey Order or Regulation." Substantiated reprisal by civilian employees is punishable under DoD regulations governing disciplinary or adverse actions.

5. Action. Commanders shall:

a. Ensure all marines, Sailors, and all DoD personnel, are aware of the Military Whistleblower Protection Act to include the definitions listed in paragraph 3 and, the definitions listed in paragraph 2 of this Order.

b. Ensure that military members assigned to their command who make an allegation of reprisal are instructed in the procedures for filing a complaint with the Inspector General of the Department of Defense, the Naval Inspector General, or the Inspector General of the Marine Corps, listed in enclosed (1) of reference (b).

TERRENCE R. DAKE
Assistant Commandant



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